Edmund Homes, Inc. *and* **Hospital and Nursing Home Employees Union Local No. 113.** Case 18-CA-6416

April 9, 1981

DECISION AND ORDER

On September 10, 1980, Administrative Law Judge James L. Rose issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief supporting the Administrative Law Judge's decision.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions of the Administrative Law Judge and to adopt his recommended Order.[2]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Edmund Homes, Inc., Minneapolis, Minnesota, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order except that the attached notice is substituted for that of the Administrative Law Judge.

[1] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[2] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten our employees with shutting down the facility or otherwise discourage their activity on behalf of the Union.

WE WILL NOT interrogate our employees concerning their interest in or activity on behalf of the Union.

WE WILL NOT promise our employees benefits in order to discourage their support for the Union.

WE WILL NOT reduce working conditions of employees in order to retaliate against them for their support of the Union.

WE WILL NOT discharge or otherwise discriminate against our employees because of their interest in or activity on behalf of the Union.

WE WILL NOT refuse to bargain with Hospital and Nursing Home Employees Union Local No. 113 as the duly designated representative of a majority of our employees in a unit appropriate for purposes of collective-bargaining.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the Act.

WE WILL offer immediate reinstatement to Lynne Kincaid, Kathy Nerison, Carol Deml, Matthew Leisure, Luke Quinn, Sharon Peterson, and Pamela Baltes to their former jobs or, if those jobs no longer exist, to substantially equivalent postions of employment, without prejudice to their seniority or other rights and benefits previously enjoyed, and WE WILL make them whole for any losses they may have suffered as a result of the discrmination against them, with interest.

WE WILL recognize and bargain with Hospital and Nursing Home Employees Union Local No. 113 as the duly designated collective-bargaining representative of our employees in a union appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act and WE WILL embody any agreement we reach with said labor organization in a signed contract.

EDMUND HOMES, INC.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: This matter was heard before me on March 31, and April 1 and 2, 1980, at Minneapolis, Minnesota. The complaint principally alleges that on various dates between September 29 and October 7, 1979,[1] the Respondent discharged seven of its employees in violation of Section 8(a)(3) of the National Labor Relations Act, as amended, 29 U.S.C.

[1] All dates are in 1979, unless otherwise indicated.

§151, *et seq.* The complaint also alleges that during the same period the Respondent engaged in various acts violative of Section 8(a)(1) of the Act; and finally, it is alleged that the Charging Party had been selected by a majority of the Respondent's employees as their collective-bargaining representative and the Respondent's refusal to bargain with the Charging Party was violative of Section 8(a)(5).

While admitting the discharges on the dates alleged, the Respondent contends that all were for cause; that it did not engage in any of the alleged violations of Section 8(a)(1); and that it did not, and has not, refused to bargain with the Charging Party as the duly designated representative of its employees in an appropriate unit.

Upon the record as a whole, including my observation of the witnesses, briefs and arguments of counsel, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

At all times material, Edmund Homes, Inc. (herein the Respondent), has been a Minnesota corporation[2] operating a facility for rehabilitative care, housing and boarding of moderately to mildly retarded and emotionally disturbed adults. During the Respondent's fiscal year it derives gross revenue in excess of $200,000 and receives in excess of $5,000 from various Federal government welfare and assistance programs. The Respondent admits, and I find, that it is, and at all times material has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Charging Party, Hospital and Nursing Home Employees Union Local No. 113 (herein called the Union), is admitted to be, and I find is, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

The president and chief operating officer of the Respondent is Lada Edmund, Sr. Her second-in-command, and also admittedly an agent of the Respondent, is Eleanor Bradway, the program director. It is alleged and admitted that Kitty Knapp, the Respondent's vice president, and Michael Lazarow (Edmund's son), the Respondent's treasurer, are agents within the meaning of Section 2(13) of the Act, although the parties agree that Knapp and Lazarow do perform bargaining unit work and should be included in the bargaining unit described *infra.*

As indicated, the Respondent operates a boarding only facility as well as two homes for which board and lodging are provided. While employees of both are included in the bargaining unit agreed to by the parties, the principal events in this matter involve employees who work with the live-in clients.

The homes are staffed on a 24-hour-a-day basis by individuals designated as assistant unit coordinators. Monday through Friday, these assistant unit coordinators work 8-hour shifts (7 a.m. to 3 p.m.; 3 p.m. to 11 p.m.; 11 p.m. to 7 a.m.). There are also assistant unit coordinators for weekends, but they apparently work more than 8-hour shifts. In any event, the assistant unit coordinators are in charge of the residences during the time of their shifts and are responsible for keeping the homes clean, instructing the clients in keeping their various rooms orderly, helping them with their dress and other matters, cooking for them and dispensing such medicines as are required.

In addition to the assistant unit coordinators, who are directed by a unit coordinator, the Respondent also employs counselors, an activities coordinator, a nurse, two caretakers, a maintenance man, and a cook.

In early September, Lynne Kincaid, one of the assistant unit coordinators, began discussing the possibility of forming a union with fellow employees and she contacted Lorne Johnson, an agent for the Union. On Sunday, September 25, Johnson, Kincaid, and Unit Coordinator John Makepeace met at a local restaurant. Then on September 27, several of the Respondent's employees met at Kincaid's apartment, at which time authorization cards were passed out. Between September 26 and 28, 11 employees in the agreed-to bargaining unit of 16 signed authorization cards. On September 28, Johnson wrote Edmund, demanding recognition. The demand was sent by certified mail and was delivered on September 29; but the Respondent, through Eleanor Bradway, decided not to accept the letter and returned it to the sender unopened.

On September 29 Kincaid and Kathy Nerison were discharged. The Respondent discharged Carol Deml on September 30, Matthew Leisure, Luke Quinn, and Sharon Peterson on October 4, and Pamela Baltes on October 7.[3]

The General Counsel contends that the discharge of these seven employees, all of whom had signed authorization cards, was motivated by their support of the Union, and was violative of Section 8(a)(3) of the Act. In addition, as will be discussed more fully, the Respondent is alleged to have engaged in certain acts violative of Section 8(a)(1), including interrogation, threats, promises of benefits, and the like during the period of September 27 through early October.

The Respondent contends that the employees were discharged because of incompetency, as Edmund testified:

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[2] Shortly following the events litigated here, the Respondent split into two corporations, one operating the board and lodging facility (Edmund Board & Lodging, Inc.) and the other the resident homes. This was apparently done for bookkeeping purposes and has no affect on the substantive allegations of the complaint, the defenses, or the remedy. The named Respondent and Edmund Board & Lodging admittedly constitute a single employer.

[3] The Respondent contends, through the testimony of Edmund, that Baltes resigned because the Respondent could not give her as many hours as she wanted. However, the complaint alleged, and the Respondent admitted in its answer, that Baltes in fact was discharged on October 7. Based upon the Respondent's admission, on which the General Counsel could rely, I find that Baltes was in fact discharged. Further, Edmund's testimony concerning this was conclusionary, and generally not credible.

Q. OK. This group of people that was terminated around the end of September, the beginning of October, why were they terminated?

A. For being very, very inefficient.

Q. Inefficient in what way?

A. In so many ways.

Edmund, as well as other of the Respondent witnesses, described in some detail the alleged areas of inefficiency of the employees who were discharged.

B. *Analysis and Concluding Findings*

1. The discharges

It is fundamental that an employer may discharge an employee for any reason, good or bad, or for no reason at all other than were motivated by that employee's union or other activity protected by the Act. Thus, the gravamen of an alleged violation of Section 8(a)(3) is the Respondent's motive, where, as here, the fact of the discharges is admitted.

Although some discussion concerning the reasons advanced by the Respondent is appropriate, *infra*, I conclude that but for the fact they had engaged in activity on behalf of the Union, this group would not have been discharged, regardless of their employment performance. The Respondent's motivation is amply demonstrated by the credible, and undenied, testimony of two individuals who were not members of the bargaining unit, and who are no longer employees of the Respondent.[4]

Martha Czech and Charlene Boyle were caretakers. They did a variety of jobs primarily involving light maintenance. The parties stipulated that Czech and Boyle were maintenance employees and thus excluded from the bargaining unit.

Czech testified that sometime prior to the discharge of Lynne Kincaid, she and Boyle were called to Edmund's residence. She testified:

> She (Edmund) wanted to know if we knew anything about the union, about who had signed up with the union and if we were ever approached and I said, "No," which we weren't. She had a list in front of her and she had names checked off and she said, "Well, I'm going to have to get rid of these people fast, because they're trying to get a union in here."
>
> Q. Did she ask you anything more?
>
> A. She wanted to know if I knew all that had signed up for it and I said "No." Then she came out and asked me if the cook, I knew the original chef, had been approached (sic) and I said, "I do not know." She said, "Would you please find out for me." I said, "Yes, I will." I asked him and he told me no. I went back and told her what he said.
>
> Q. Did she say anything else about that list of names, that you recall? Other than what you testified to?
>
> A. Yes, well first she said Lynne was the main name she needed to know, Lynne Kincaid had started it.
>
> Q. Did she talk about any other names that you recall?
>
> A. Matt (Leisure) and Kathy (Nerison) and Luke (Quinn). Those I remember.

Boyle similarly testified to the meeting she and Czech had with Edmund. Boyle testified:[5]

> A. Well, she asked if I was confronted by the union. And I told her I was not. And she said she had a list of 13 people and she could only account for 11 people. So she called Martha and I over and wanted to know if we were the other two. And I had no knowledge of the Union.
>
> Q. OK, what, if anything, did she say then?
>
> A. She turned around and she told Martha and I that she was going to have to fire some, because they had signed for the union to join the union.

Boyle went on to testify that the names Edmund mentioned that she could remember were Luke Quinn and Lynne Kincaid. Finally, Boyle testified that during the period just after the discharges she was told by Edmund to go through the logbooks that are kept at the homes: "Lada Edmund asked me to go through them. She wanted me to find certain items in the log book to go against the ones she had fired."

Boyle testified that she did go through the logbooks and took the information to Edmund who then had Kitty Knapp type it.

Whatever complaints the Respondent may have had concerning each individual's work performance, it is clear from the credible, mutually corroborated, and undenied testimony of Czech and Boyle that the reasons these individuals were singled out for discharge was because of their known or suspected union activity. Thus, in discharging them, the Respondent clearly violated Section 8(a)(3) of the Act.

Beyond this, the Respondent's main protestations regarding the various discharged employees and Edmund's claim that none were discharged because of their union activity simply did not ring true.

There is nothing in the Act which requires the Respondent to be rational or consistent. However, experience suggests that employers do in fact conduct their affairs generally in an orderly fashion. Thus, where acts and statements of purpose are inconsistent or where a

[4] In argument, the Respondent contends that these individuals should not be credited because they are "disgruntled" ex-employees who had some kind of mental problem. There is no showing on the record, however, why these individuals should not be credited. To the contrary, I found their demeanor to be quite positive and their recollection consistent with the time elapsed between the events to which they were testifying and the hearing. Beyond that, as noted above, their testimony was not denied from which I can and do infer that the substance of their testimony was accurate.

[5] The Respondent argues that Boyle ought to be discredited because she placed the time of the conversation at "several weeks" before Kincaid's discharge. Clearly the conversation happened closer to Kincaid's discharge than "several weeks"; however, given my observation of Boyle, I do not believe that this is a sufficient basis to discredit her otherwise credible testimony concerning the substance of the conversation. I conclude that her testimony in this respect was her best effort to place in time an event which occurred some months prior to her testimony.

discharge, for instance, is unreasonable given all the circumstances, then such is evidence that the proffered motive is untrue, "[m]ore than that, he (the trier of fact) can infer that the motive is one that the employer desires to conceal—an unlawful motive—at least where, as in this case, the surrounding facts tend to reinforce that inference." *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966).

The testimony of the Respondent's witnesses, particularly that of Edmund and Bradway, not only lead me to disbelieve their conclusionary statements that none of the individuals was discharged for union activity, but generally to discredit them. For instance, Edmund testified:

> They [the individuals discharged] were hired basically all at the same time. It was a new thing. Before that we only had two people, a day person and a night person which worked beautifully. And you can take your time on hiring one or two people and know what you have. But when you have to have a new staff in a hurry you take the best you can and trust to God whoever.

In short, Edmund testified and the Respondent argued that, because of a change of operation in late 1978, the Respondent was required to hire a large number of new staff in a short time and thus could not be selective; hence, those hired turned out to be incompetent, which necessitated their discharge in 1979.

In fact, however, the Respondent hired only four employees in late 1978 two of whom were among those discharged (Nerison and Quinn). The others were hired sporadically throughout 1979. Deml was hired in August. In short, Edmund's testimony concerning the hiring of the staff that she ultimately discharged is not even close to the reality demonstrated by her records.

Though testifying that the employees discharged were incompetent from the inception of their employment, Edmund, nevertheless, gave bonuses during early 1979. Thus Luke Quinn, who was singled out for discharge not only because of his gross incompetency but because he often reported to work late, received a $1,000 bonus, even though at that time he was considered to be a marginal employee. Marginal employees are simply not given bonuses of such a large amount. But, Edmund testified, in effect, that she gave bonuses in inverse proportion to the competency of the employee. Thus, according to her, she gave the bonuses in order "to encourage better work from these particular people. Somebody got less than others, it's because they didn't need as much encouragement." Without more, I simply cannot accept this unusual assertion that larger bonuses were given in accordance with the employees' incompetency. The bonus to Quinn is just simply inconsistent with Edmund's claim that he had always been a poor employee.

Similarly, in early September Kincaid asked for a raise in pay and was given 25 cents an hour, even though Edmund contends she had already determined to discharge Kincaid for incompetence and inefficiency. Edmund testified that she hoped the raise would induce Kincaid to change her ways. Again, to grant a pay raise to an employee whose discharge has been determined is totally inconsistent with the way employers normally conduct their affairs, so much so that I must infer that Edmund had not in fact decided to discharge Kincaid at that time.

Then there is the matter of the class B drivers' license. It is contended that a number of the discharged employees were required to have a class B drivers' license so that they could drive the Respondent's 10-passenger van, and their failure to procure such a license was one of the reasons why they were discharged. Thus, Bradway testified that from the beginning of Quinn's employment in September 1978 she asked him "every month" to get a class B license but he did not do so.

However, in testifying, and on behalf of the Respondent, Michael Lazarow said that the van which requires the operator to have a class B license was purchased in the spring of 1979. Further, he testified that he had driven that van for several months before he obtained his class B license, which he did following the events in this matter. I therefore must conclude that the alleged failure of any of these individuals to have a class B license could not have been a real reason for their discharge, and that the testimony of Edmund and Bradway on this subject was an attempt to mislead on a material issue.

The timing of the decision to effect the discharges, as alleged by the Respondent, was also inconsistent. For instance, Edmund and Bradway place the determination to discharge the individuals in question at sometime in late summer and certainly no later than early September, prior to any union activity. Thus, Edmund testified that she reached the decision to discharge Quinn in August. She did not in fact discharge him until October 4, some 2-months later, because "I was waiting for a miracle."

There was a meeting of employees on September 27, at which Edmund told them there were going to be some staff changes. Bradway testified that the decision to discharge certain employees was made in early September but they did not want to fire anybody until after they had had a staff meeting; and, the earliest date on which the entire staff could be present was September 27. Bradway testified that had they been able to get the staff together earlier (inferentially on September 1) the discharges would have been effected then. It is noted that, of the 16 employees in the bargaining unit, only 10 were present at the September 27 meeting. In short Bradway's claimed reason for delaying the staff meeting is simply not consistent with the record of that meeting kept by the Respondent.

Finally, whatever inadequacies these individuals may have demonstrated, Nerison and Quinn had been employed for a year and others for several months. This shows that the Respondent has a practice of tolerating individuals who occasionally come into work late, and who from time to time have to be corrected with regard to their cleaning and other duties. Indeed, Bradway testified that never before had there been a discharge of so many individuals in such a short period. In fact, Bradway testified that there had never been a discharge of more than one individual at a time. Or as Edmund testified, "I've had staff in my Board and Lodging that I've

helped for five years before they were good. And now they're very good."

In short, the Respondent's policy until the end of September was not to discharge staff members because they did not perform their duties as adequately as Edmund would have liked; but rather to encourage and work with them. From this I can and do infer that changing the policy and discharging several individuals within a 2-week period was caused by reasons other than their alleged poor performance. I conclude that the reason was the organizational campaign.

No doubt the Respondent had a concern that the assistant unit coordinators kept their respective homes clean and performed their duties. Certainly it is reasonable that Edmund would inspect the homes from time to time and when discrepancies were found to bring them to the attention of the responsible employee. Thus, it is not unreasonable Edmund would have an inspection in August and another on September 1 and would tell the employees of the results. Nevertheless, I conclude that the discrepancies found during those inspections were not a reason for the employees' discharges. The Respondent's past practice generally, and with these employees in particular, demonstrates that there was no intent on Edmund's part to discharge any of them.

The contentions with regard to Kincaid, Nerison, Leisure, Quinn, and Peterson, namely, sloppiness in house work, not being good with patients, not having a class B drivers' license and so on, while general was to a greater or lesser extent factually supported. Nevertheless, I conclude that such was not the true reason for the discharges. In concluding the Respondent acted with an antiunion motive, I have also considered the timing with the employees' union activities; that only card signers were discharged; the credible and mutually corroborative and unrebutted testimony of Boyle and Czech; and the Respondent's past history of tolerating a certain degree of what might be termed "inefficiency" among employees. Whatever objections Edmund may have had concerning any of the discharged employees, none was the motivating cause for that employee's discharge. Rather, from the totality of the record, it is clear that the motivating cause for the discharges was the employees' union activity. Although protesting that she is "a union person" and has no objection to bargaining with the Union, Edmund's assertion in this regard is belied by the substantial union animus demonstrated by the 8(a)(1) conduct by her and other management personnel.

It should also be noted that in what appears to be an effort to disguise the Respondent's knowledge of union activity among the employees, Bradway refused to sign for and accept on behalf of the Respondent the registered letter sent by the Union, and delivered on September 29. Bradway incredibly testified that although second to Edmund as an operating officer of the Company, she did not have the authority to sign for certified mail. This testimony was in juxtaposition to her further testimony that Matthew Leisure, an assistant unit coordinator, did have the authority to sign for and receive a health inspection report. Although initially testifying that she did not have the authority, subsequently, Bradway testified that she did not accept the latter after consultation with Edmund or Kitty Knapp on grounds that the sender was the Union, and that union had "nothing to do" with Edmund Homes.

Carol Deml was a full-time schoolteacher; hired in August to work the 11 p.m. to 7 a.m. shift. The Repondent contends that Deml was discharged primarily because she slept on the job. Deml, on the other hand, credibly testified that she was furnished a bedroom (undenied) and was allowed to sleep. Her job was to clean the house, which she was able to do in a short period after reporting to work, and then arise in time to cook breakfast for the house residents. Based on her demeanor as well as the probability of truthfulness of her substantive testimony, I conclude that, in fact, Deml was allowed to sleep during some portion of the night she was working. I specifically discredit the testimony of Edmund and Bradway to the contrary. Undenied is the testimony of Terrance Paulson, who also worked on the night shift; and was told in February by Edmund that her policy allowed those working this shift to sleep as long as he did not neglect his duties. Thus I conclude that the reason given for discharging Deml was a fabrication: that she was in fact discharged because of her union activity.

Finally, for the reasons outlined above, I also conclude that Baltes' discharge was violative of Section 8(a)(3). With regard to Baltes, there was no specific assertion that she was inefficient, the Respondent contending simply that she quit, a conclusion I reject, *supra.*

2. The Respondent's 8(a)(1) conduct

Among other matters discussed below, it is alleged that the Respondent threatened to reduce an employee's hours, and did so; increased an employee's wage rate; threatened an employee with blacklisting, all in order to discourage employees' union activity. The only evidence offered to support these allegations of 8(a)(1) conduct (and additional allegations of threatening facility closure) was the investigatory affidavit of Pamela Baltes who at the time of the hearing was out of the country and unavailable as a witness. The Respondent's objection to receiving the affidavit on grounds that it is hearsay was sustained, reconsideration of which the General Counsel now urges. I reaffirm my rejection of the affidavit, and dismissal of these paragraphs of the complaint, 6(b), (c), (n), (o), and (p), because the affidavit is the only proof to support them.

If the relevance of an out-of-court statement depends on the credibility of the declarant, the statement is hearsay. Here in order for the statements in the affidavit to prove the substantive allegations of the complaint, Baltes must be credited. Thus, the statements are hearsay. Hearsay is generally not admissible as evidence because the credibility of the declarant cannot be tested, a right which is fundamental to our jurisprudence and is the essence of fair play in a trial.

Nevertheless, the hearsay rule is not *per se* applicable. *Georgetown Associates d/b/a Georgetown Holiday Inn*, 235 NLRB 485 (1978). Indeed, a proffered fact is not false simply because it is sought to be proven by hearsay. It may be true and if not objected to will be received and given appropriate weight. *Alvin J. Bart and Co., Inc.*, 236

NLRB 242 (1978). Where objected to, however, hearsay is excluded not because the statement is necessarily untrue, but because the method of proof is deficient—as opposed to live testimony, the trustworthiness of the declarant cannot be examined.

However, sometimes the hearsay offer is surrounded by sufficient indicators of trustworthiness to lead one to conclude that the fact is more probably true than not. In such siutations, the right to examine the declarant in open court seems less important than having the fact in evidence. Thus a number of hearsay exceptions have been devised, now codified in the Federal Rules of Evidence, Sections 803 (where the declarant is available) and 804 (where the declarant is unavailable). The essence of each exception, whether or not the declarant is available as a witness, is the inherent probability that the statement is true.

Statements of fact contained in the investigatory affidavit of Baltes do not withstand the test of probable trustworthiness. There is no showing that the affidavit exhausted Baltes' memory on the subject matters discussed. There is no showing that the affidavit is complete. Further, the affidavit was taken by a Board agent who testified that in part, at least, statements in the affidavit were his interpretation of what Baltes told him and not in every instance her statement verbatim. Thus, it is unknown whether the facts asserted are indeed facts or are the Board agent's conclusions. The investigatory affidavit, I believe, is simply not sufficiently reliable to support a finding of the unfair labor practices alleged, particularly where there is no direct corroborative evidence concerning those matters. Cf. *RJR Communications, Inc.*, 248 NLRB 920 (1980). Nor is trustworthiness established simply because similar unfair labor practices were proven by direct evidence.

It should be noted that Baltes' affidavit need not be considered in order to find that she was discharged in violation of Section 8(a)(3) of the Act. In its answer, the Respondent admitted that Baltes was discharged; and the surrounding circumstances show that she was discharged under circumstances substantially identical to those of the other individuals who signed authorization cards as did Baltes. Further, as noted above, the testimony of Edmund is simply not generally credible; and I do in fact discredit her contention that Baltes quit, rather than having been discharged.

a. *Interrogation*

Sharon Peterson testified that on September 29 Edmund requested that she meet with her. When Peterson arrived, she heard Kitty Knapp on the telephone saying that Nerison was to be fired. Following the phone conversation Knapp left, at which time Edmund said that she knew of the Union and that she had fired Lynne Kincaid, "because she was an agitator and trying to bring a union into the Edmund Home." Edmund further told Peterson they did not need a union because they were neither a nursing home nor a hospital and that that morning she had refused a certified letter. During the course of this conversation, Edmund asked Peterson "if I had signed a union card."

Several days later, on October 2, Edmund came to the resident house in which Peterson was working and after a short conversation, the essence of which will be described *infra*, she asked Peterson to accompany her home. During the course of this conversation, Edmund stated that she was disappointed in Peterson for becoming involved with the Union and kept asking "why, why, why." This testimony of Peterson is undenied by Edmund. Further, I found Peterson to be a credible witness, and I conclude that Edmund, as alleged, did interrogate an employee concerning her union activity.

It is also alleged that on October 2 Michael Lazarow interrogated an employee. Specifically, Terrance Paulson testified, credibly I believe, that during a meeting with Kitty Knapp and Lazarow on October 2, among other things, Lazarow told him that 13 people had signed cards and he asked Paulson "if Terry, the cook, had signed a card, if I knew that Terry, had signed the card. I said I did not know." Although Lazarow testified generally to this conversation, stating that the thrust of it was that he was angry because he had not been informed of the Union and he considered himself to be a rank-and-file employee, Lazarow did not deny this statement attributed to him by Paulson.

Although the parties have stipulated that Lazarow should be included in the bargaining unit because he sometimes does bargaining unit work, it is also alleged and admitted that he was an agent of the Respondent. Thus, his questioning of Paulson was in fact interrogation concerning employees' union activity and was violative of Section 8(a)(1).

b. *Threats*

Leisure testified that during the course of a discussion he had with Edmund on September 27, in which Edmund said that she intended to discharge Kincaid, Edmund said, "something to the effect that if this union were to carry through, she wouldn't be able to afford it and she would have to close down the facility."

This is alleged to be a threat in violation of Section 8(a)(1), and I find it was. It is alleged in the complaint to have occurred on October 1, however, the testimony reveals that it occurred on September 27, an immaterial variance. Finally, Edmund did not deny the substance of this conversation in any event, and I found Leisure to be a credible witness.

Further undenied is the testimony of Paulson to the effect that on or about October 2, in a conversation with Kitty Knapp, she stated that "she was going to be very frank with me, that they had learned of the union activities of the staff, that Lada was very disappointed,[6] and went on to say that the union—if the union became involved that they would quite possibly have to close the facility down." I find that the statement attributed to Knapp occurred substantially as testified to by Paulson; and I conclude that Knapp, as an agent of the Respondent, threatened an employee in violation of Section 8(a)(1) of the Act.

[6] Certain errors in the transcript are hereby noted and corrected.

During the October 2 meeting Edmund had with a group of employees she undeniably stated, according to the testimony of Peterson, "that she knew there was a union being formed and that she didn't know why they were trying to get us to join, but unless they wanted us to lose our jobs." This is alleged to have been a threat of loss of jobs if the organizational efforts were successful, and I find that it was. In this respect I also conclude that Edmund violated Section 8(a)(1) of the Act.

During Edmund's later conversation with Peterson, following the general discussion with the group of employees, according to the undenied testimony of Peterson, Edmund said, "that they could not afford to operate Edmund Homes, Incorporation if the union came into the facility." This is alleged to be, and I find was, a threat to close the facility in violation of Section 8(a)(1) of the Act.

c. *Promises*

During his conversation with Kitty Knapp on or about October 2 referred to above, Paulson went on to testify that:

> Kitty Knapp told me that Lada was disappointed that I had signed the card because I was doing a good job. She had given me a thousand dollar bonus in February, and I was the only weekend staff person that received a thousand dollar bonus, and that she was thinking of, possibly giving me another bonus, because I'd been doing a good job, painting, et cetera.

By the above testimony, the General Counsel alleges that the Respondent through Kitty Knapp promised a bonus to an employee should he cease his union activity. The employee was reminded that he had been given a bonus in the past; that he had been the only one in his situation to have received a bonus; and that the employer still liked his work but was "disappointed" that he had participated in the union activity. The only reasonable conclusion an employee could come to from such a statement was that another bonus would be forthcoming only if he rejected the Union. Such is clearly a promise of a benefit in violation of Section 8(a)(1) of the Act, and I so find.

Paulson testified that during his meeting with Edmund on October 2, among other things they discussed the vacation policy. Edmund said that after 1 year employees would get a week's vacation. Paulson checked the employment manual and found that such was not the case. The next day he told Edmund about this and she said she would check with her consultant the next week and try to get the matter of a vacation policy worked out.

This is alleged to be a promise of benefit to employees to cease their union activity. Again, the general nature of the conversation between Edmund and Paulson and the statements attributed to her are undenied. I therefore conclude that, as alleged, the Respondent did violate Section 8(a)(1) of the Act. There is, however, no indication from Paulson's testimony, as alleged in the complaint, that Edmund actually gave him vacation time.

d. *Reduced staff*

It is alleged that on October 3 Lazarow told Peterson, according to Peterson's testimony, that "at no further time was any board and lodging staff to help me with activities." This is alleged to be a reduction of staff available to assist in recreation activities and was instituted by the Respondent to retaliate against employees' union activity. By this statement, which is undenied in the record, it is alleged the Respondent through Lazarow did interfere with employees' Section 7 rights, and I so conclude.

e. *The employee manual*

It is alleged that on October 6 the Respondent introduced a new employee manual, which announced certain additional benefits to discourage employee support of the Union. There is no question that the manual was introduced on or about the date indicated. While there had been a predecessor employee manual, it appears from the uncontradicted testimony of employees who testified concerning the manual that it contained some additional benefits, particularly with regard to vacation policy.

Edmund testified that she contracted with M.R. Services, a management consultant firm for the type of facility the Respondent operates, some months prior to the events in this matter. One of the services to be performed by M.R. Services was to develop an employee manual, which Edmund and Bradway testified was received in August but, for reasons they were unable to explain, was not disseminated to employees until immediately following the advent of the union activity. Finding, as I must on the state of this record, that this manual in fact did include certain upgrading of employee benefits, the timing of its introduction must be found to have interfered with employees' Section 7 rights, even though these benefits may have been contemplated prior to the union activity. I accordingly conclude that by introducing the new employee manual on October 6, the Respondent did violate Section 8(a)(1) as alleged. However, though I find this to be an unfair labor practice, I will not recommend that the Respondent rescind the manual or the benefits contained therein. There is nothing in the record to indicate that the manual in any other respect is violative of the Act or in any way diminishes employees working conditions from those which existed prior to October 6.

In addition to the 8(a)(1) violations found above, in the many conversations Edmund, Bradway, Knapp, and Lazarow had with employees during the period from September 27 through October 5, are other statements which could be found threatening, interrogation, and promises of benefits in violation of Section 8(a)(1) of the Act. None of these, however, was specifically alleged in the complaint and although litigated, at least to some extent, I find it is not necessary to make specific findings with regard to any. To do so would add nothing to remedy in this matter.

3. The refusal to bargain

It is alleged and admitted that a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act is:

> All full and regular part-time employees employed as unit coordinator, assistant unit coordinators, activities director and counselors by Respondent and Edmund Board & Lodging, Inc., excluding office clerical employees, professional and management employees, and maintenance employees, guards and supervisors as defined in the Act.

In addition the parties stipulated to certain specific inclusions and exclusions from the unit. Thus on September 27, the Respondent had 23 employees (including Edmund and Bradway), of whom 16 would be included in the bargaining unit. By September 28, the day the Union demanded recognition by sending the certified letter to Respondent, 11 of those employees had signed authorization cards designating the Union as their collective-bargaining representative.

The Union had been designated by a majority of the employees in the bargaining unit and made an appropriate demand for recognition, even though that demand was not "accepted" by the Respondent. In this respect, it should be noted that after much testimony with regard to Bradway's refusing to sign for the demand letter, she finally testified:

> I had called and I am not sure whether it was Kitty or Lada, saying that this letter was laying on the desk and where it was from and at that time, none of us thought that we had anything to do with the nursing home or hospital thing, so I just wrote on there "Return to Sender," or whatever. "Not Opened."

Clearly the Respondent's agents refused to accept a letter because they knew it contained some kind of a demand. And indeed, the testimony of Johnson, undenied by Bradway, is that a few days later he talked to her on the telephone stating to her that the Union had demanded recognition and that the Union represented the majority of the employees.

There is no question on the record before me that beginning about the time the Respondent learned of the union activity, which was very early in the organizational campaign, it undertook a course of conduct necessarily designed to undermine the employees' efforts to organize on behalf of the Union. There were threats, interrogation, promises of benefits, and beginning on September 27, the discharge of 7 of the 11 card signers.

In such circumstances, it is clear that a fair election would be improbable and in any event, a bargaining order would be appropriate to remedy the Respondent's unfair labor practices. *N.L.R.B.* v. *Gissel Packing Co., Inc., et al.*, 395, U.S. 575 (1969). I shall so recommend.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The unfair labor practices found above, occurring in connection with Respondent's operations, have a close, intimate, and substantial relationship to trade, traffic, and commerce among several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Respondent be ordered to bargain with the Union as the designated representative of a majority of the Respondent's employees in an appropriate bargaining unit, and I shall recommend that the Respondent be ordered to offer to reinstate Lynne Kincaid, Kathy Nerison, Carol Deml, Matthew Leisure, Luke Quinn, Sharon Peterson, and Pamela Baltes to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or other rights and benefits, and make them whole for any losses they may have suffered as a result of a discrimination against them in accordance with the formula as set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as provided for in *Florida Steel Corporation*, 231 NLRB 651 (1977).[7]

Upon the foregoing findings of fact, conclusions of law, and the entire record in this matter, and pursuant to the provisions of Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[8]

The Respondent, Edmund Homes, Inc., Minneapolis, Minnesota, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with closing down the facility, loss of jobs, or other loss of benefits in order to discourage their support for or activity on behalf of the Union.

(b) Interrogating employees concerning their support of or activity on behalf of the Union.

(c) Promising employees benefits to discourage their interest in or activity on behalf of the Union.

(d) Reducing working conditions of employees in order to retaliate against them for their activity on behalf of the Union.

(e) Refusing to recognize and bargain with the Union as the duly designated representative of a majority of the employees and a unit appropriate for purposes of collective bargaining.

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[7] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[8] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(f) Discharging or otherwise discriminating against employees because of their interest in or activity on behalf of the Union.

(g)In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Recognize and, upon request, bargain with the Union as the duly designated representative of a majority of the employees in the unit described above found appropriate for purposes of collective-bargaining within the meaning of Section 9(b) of the Act, and embody any agreement reached in a written, signed contract.

(b) Offer immediate and full reinstatement to Lynne Kincaid, Kathy Nerison, Carol Deml, Matthew Leisure, Luke Quinn, Sharon Peterson, and Pamela Baltes to their former jobs or, if those jobs no longer exist, to substantially equivalent positions of employment and, make them whole for any losses they may have suffered as a result of the discrimination against them in accordance with the formula set forth in the Remedy section above.

(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its premises in Minneapolis, Minnesota, copies of the attached notice marked "Appendix."[9] Copies of the notice, on forms provided by the Regional Director for Region 18, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

(f) The allegations in the complaint not specifically found herein, particularly including paragraphs 6(b), (c), (n), (o), and (p), are dismissed.

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[9] In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."